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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 UNITED STATES OF AMERICA,)	CASE NO. CR 19-00643-JST (SK)
)	
14 Plaintiff,)	DETENTION ORDER
)	
15 v.)	
)	
16 ROSS ANTHONY FARCA,)	
)	
17 Defendant.)	
)	

18
19 **INTRODUCTION**

20 On November 26, 2019, the Court ordered defendant Ross Anthony Farca (“Defendant”) to be
21 detained pursuant to 18 U.S.C. § 3142. As noted on the record and in the written Order, the Court found
22 no condition or combination of conditions in section 3142(c) would reasonably assure the safety of any
23 person or the community if Defendant were to be released. (Dkt. 12.) The Court also found by clear and
24 convincing evidence that Defendant poses a danger to the community. On March 30, 2020, Defendant
25 filed a motion for release from custody based on changed circumstances. (Dkt. 30.) On April 1, 2020,
26 the government filed an opposition to Defendant’s motion for release from custody. (Dkt. 32.) At the
27 telephonic detention hearing on April 2, 2020, Defendant waived his personal presence, and he was
28 represented by his attorney, Joyce Leavitt. An officer from the United States Pretrial Services Agency

as also present at the hearing. Defendant moved for release, and the government opposed. The parties submitted proffers and arguments.

Upon consideration of the written submissions and the parties' proffers at the detention hearing, the factors set forth in the bail statute, and for the reasons stated on the record and summarized below, the Court finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of the community if Defendant were to be released. The Court also finds that the changed circumstances that Defendant proffers will not mitigate Defendant's danger to the community under 18 U.S.C. § 3142(f). Accordingly, the Court orders that Defendant be detained pending trial.

LEGAL STANDARD

Under the bail statute, 18 U.S.C. § 3142, a court must order the release of a defendant on a personal recognizance or unsecured bond unless release on a bond alone will not reasonably assure the defendant's appearance or the safety of the community or another person. 18 U.S.C. § 3142(b). If a court determines that release on a bond alone presents a risk of nonappearance or a danger to any person or the community, then the court must choose the least restrictive conditions that will assure the defendant's appearance and the safety of the community or another person. *See id.* §3142(c) (listing thirteen possible conditions of release and empowering the court to impose "any other condition that is reasonably necessary" to assure the defendant's appearance and the community's safety). The court must order a defendant detained if, "after a hearing pursuant to the provisions of subsection 3142(f)," the court finds that conditions cannot be fashioned to assure the defendant's appearance in court or the safety of the community or another person. *See id.* §3142(e)(1).

At the detention hearing, the court determines whether any conditions in section 3142(c) will reasonably assure the defendant's appearance and the safety of the community or another person. *See id.* §3142(f). In evaluating whether conditions can be fashioned to assure the defendant's appearance and the safety of the community or another person, a court "shall consider" the factors in section 3142(g), including (1) the nature and circumstances of the offense, (2) the weight of the evidence, (3) the history and characteristics of the person (including employment, financial resources, family ties, community ties, substance abuse history, physical and mental condition, character, criminal history, past

1 conduct, track record in appearing in court, and whether at the time of arrest the person was on
2 supervision for parole, probation, or other release in a pending criminal case), and (4) the nature and
3 seriousness of the danger to any person or the community posed by the person's release.

4 Pursuant to 18 U.S.C. § 3142(f), a detention hearing may be reopened "if the judicial officer
5 finds that information exists that was not known to the movant at the time of the hearing and that has a
6 material bearing on the issue whether there are conditions of release that will reasonably assure the
7 appearance of such person as required and the safety of any other person and the community." 18
8 U.S.C. § 3142(f).

9 **DETENTION ORDER**

10 The present order supplements the Court's findings and order at the detention hearing and serves
11 as written findings of fact and a statement of reasons as required by 18 U.S.C. § 3142(i)(1). As noted on
12 the record, the changed circumstances raised by Defendant will not mitigate Defendant's danger to the
13 community, and the Court finds no condition or combination of conditions in section 3142(c) will
14 reasonably assure the safety of any person or the community. The Court gave the basis for its findings
15 on the record and finds by clear and convincing evidence that Defendant poses a danger to the
16 community.

17 Defendant argues that his father will be a suitable custodian for him. At the previous hearing,
18 Defendant's father did not offer to be a custodian for Defendant on release. However, the Court does
19 not find that Defendant's father could be a suitable custodian under the current circumstances. Given
20 Defendant's conduct while on bond in his state case, the Court remains concerned that Defendant's
21 father's current work schedule will prevent him from being home during the evening and early morning
22 hours to monitor Defendant.

23 Defendant also argues that the COVID-19 pandemic is a changed circumstance that justifies
24 Defendant's release. Specifically, Defendant argues that he suffers from obsessive-compulsive disorder
25 ("OCD") and Misophonia (here, sensitivity to the sound of running water) that makes compliance with
26 efforts to mitigate the risk of contracting COVID-19 difficult for Defendant. Defendant also argues that
27 other inmates have physically assaulted him and that he faces a very light sentence that may be shorter
28 or almost equal to his current period of incarceration. At the hearing, Defendant also argued, with no

1 citation to evidence or scientific research, that Defendant also suffers from gastritis, which increases his
2 risk in this COVID-19 pandemic. The Court is aware of the concerns and takes them seriously but must
3 balance them with the risk to the community. Previously, when the Court ordered that Defendant be
4 detained, the Court noted that Defendant had made violent, anti-Semitic comments in an electronic
5 forum, that he, while on pretrial release for his state criminal case, communicated with a potential mass
6 shooter in an encrypted email, and that he had previously owned an semi-automatic rifle and 13 rifle
7 magazines. Given these factors, the Court found at that time that Defendant was a danger to the
8 community and that no conditions of release could mitigate that danger. That Defendant has medical
9 conditions that make compliance with hygiene to prevent contracting COVID-19 is a serious issue, but it
10 does not override the danger to the community.

11 Thus, even in light of the new developments, the previous factors listed above clearly and
12 convincingly demonstrate that, if released, Defendant would be a danger to the community, and thus no
13 conditions could be fashioned to prevent the danger to the community. This finding is made without
14 prejudice to Defendant's right to seek review of detention or file a motion for reconsideration if
15 circumstances warrant it.

16 Accordingly, pursuant to 18 U.S.C. § 3142(i), IT IS ORDERED THAT:

17 1. Defendant be, and hereby is, committed to the custody of the Attorney General for
18 confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving
19 sentences or being held in custody pending appeal;

20 2. Defendant must be afforded reasonable opportunity for private consultation with his
21 counsel; and

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1 3. On order of a court of the United States or on request of an attorney for the government,
2 the person in charge of the corrections facility in which Defendant is confined shall deliver Defendant to
3 an authorized United States Marshal for the purpose of any appearance in connection with a court
4 proceeding.

5 IT IS SO ORDERED.

6
7 DATED: April 3, 2020


HONORABLE SALLIE KIM
United States Magistrate Judge